



Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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Statement of
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House Bill 5653
The Uniform Electronic Legal Material Act (2011)
Before the Standing Committee of the House Judiciary
September 20, 2016

Chair Kesto and Members of the Judiciary Committee:

Good afternoon, my name is Kaitlin Dohse and I am Legislative Counsel at the Uniform Law Commission.

I would like to thank all of you for giving me the opportunity to testify on behalf of House Bill 5653 – the proposed Michigan Uniform Electronic Legal Material Act. The Uniform Electronic Legal Material Act was promulgated by the Uniform Law Commission in 2011. The Uniform Law Commission is a non-profit organization formed in 1892 to draft non-partisan model legislation in the areas of state law for which uniformity among the states is advisable.

Michigan has a long and successful history of enacting ULC acts, including the Uniform Commercial Code, the Uniform Anatomical Gifts Act, the Uniform Trust Code, the Uniform Transfers to Minors Act, the Uniform Prudent Investor Act, and dozens of others.

Increasingly, state governments are publishing laws, statutes, agency rules, and court rules and decisions online. In some states, important state-level legal material is no longer published in books, but is only available online. Electronic publication of legal material has facilitated public access to the material. HB 5653 provides states with an outcomes-based approach to the authentication and preservation of electronic legal material. The goals of the authentication and preservation program outlined in the HB 5653 are to enable end-users to verify the trustworthiness of the legal material they are using and to provide a framework for Michigan to preserve legal material in perpetuity in a manner that allows for permanent access.

The HB 5653 provides for authentication, preservation, and accessibility of official electronic state legal material.

HB 5653 is needed because the availability of government information online facilitates transparency and accountability, provides widespread access to essential information, and encourages citizen participation. The bill addresses the critical need to effectively provide and manage electronic government information in a manner that guarantees trustworthiness and continued access.

HB 5653 requires official publishers to consider the most recent standards for the preservation, authentication, and access to electronic legal material. The bill recognizes that technology will

continue to change and improve, and supports collaboration among jurisdictions in choosing and implementing new technologies.

HB 5653 does not require specific technologies, leaving the choice of technology for authentication and preservation for Michigan to decide. By giving Michigan the flexibility to choose any technology that meets the required outcomes, Michigan will be able to choose the best and most cost-effective method for itself.

Adoption of the HB 5653 will harmonize standards for acceptance of electronic legal material across jurisdictional boundaries. If your state enacts HB 5653, the presumption that your authenticated electronic legal material is accurate applies in every other state that has enacted the Uniform Electronic Legal Material Act. If another state enacts the Uniform Electronic Legal Material Act, and authenticates its electronic legal material, that state's authenticated legal material is presumed to be an accurate copy for use in your state.

If passed, HB 5653 will be an important step in improving the integrity of Michigan's electronic legal material and provide Michigan patrons with access to open data. I ask your support to advance this important legislation. Thank you for your time and attention. I am happy to answer any questions you may have.



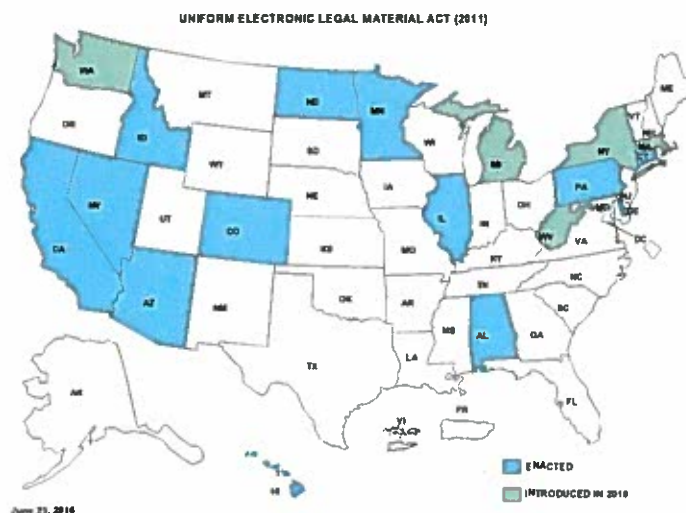
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A Few Facts about THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT

- PURPOSE:** The Uniform Electronic Legal Material Act (UELMA) establishes an outcome-based, technology-neutral framework for providing online legal material with the same level of trustworthiness traditionally provided by publication in a law book. UELMA requires that official electronic material be: (1) authenticated, by providing a method to determine that it is unaltered, (2) preserved, either in electronic or print form, and (3) accessible, for use by the public on a permanent basis.
- ORIGIN:** Completed by the Uniform Law Commission in 2011. Targeted since 2011.
- ENDORSED BY:** American Association of Law Librarians (AALL); American Bar Association Standing Committee on the Law Library of Congress; Houston Area Law Librarians; Law Library Association of Maryland; Association of Law Libraries of Upstate New York; Southeastern Chapter of AALL; Western Pacific Chapter of AALL; Ohio Regional Association of Law Libraries; and Southwestern Association of Law Libraries
- APPROVED BY:** American Bar Association
- ENACTED BY:**





WHY YOUR STATE SHOULD ADOPT THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT

The availability of government information online creates transparency and accountability, and provides widespread access to vital information. The Uniform Electronic Legal Material Act (UELMA) addresses the critical need to effectively provide and manage electronic government information in a manner that guarantees trustworthiness and continued access.

- The UELMA provides for authentication, preservation, and accessibility of official electronic state legal material. Adoption of UELMA will assist state governments in guaranteeing a free flow of trustworthy legal information.
- States can choose which categories of “legal material” will be covered by the Act. Flexible language and alternative provisions allow states to tailor the act to their needs.
- The UELMA requires official publishers to consider the most recent standards for preservation, authentication, and access to electronic legal material. The act recognizes that technology will continue to change and improve, and supports collaboration among jurisdictions in choosing and implementing new technologies.
- The UELMA does not affect any relationships between an official state publisher and a commercial publisher, leaving those relations to contract law. Copy right laws also remain unaffected. The act does not affect rules of evidence; judges will continue to be able to make decisions about the admissibility of electronic evidence in their courtrooms.
- The UELMA does not require specific technologies, leaving the choice of technology for authentication and preservation to the states. Giving states the flexibility to choose any technology that meets the required outcomes allows each state to choose the best and most cost-effective method for the state.
- Adoption of the UELMA will harmonize standards of acceptance of electronic legal material across jurisdictional boundaries. If the UELMA is enacted in one state, the presumption that authenticated electronic legal material is accurate applies to every other state that has enacted the UELMA.

For further information about the UELMA, please contact ULC Legislative Staff, Brian Lewis at (312) 450-6619 or blewis@uniformlaws.org; or Katie Robinson at (312) 450-6616 or krobinson@uniformlaws.org.



THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT

- A Summary -

Increasingly, state governments are publishing laws, statutes, agency rules, and court rules and decisions online. In some states, important state-level legal material is no longer published in books, but is only available online. While electronic publication of legal material has created public access to the material, it has also raised concerns. One concern is whether the legal material is official, authentic, government data, which has not been altered. An additional concern is how will electronic legal material be preserved? How will the public access the material ten, fifty, or even 100 years from now? The Uniform Electronic Legal Material Act (UELMA) provides states with an outcomes-based approach to the authentication and preservation of electronic legal material. The goals of the authentication and preservation program outlined in the act are to: enable end-users to verify the trustworthiness of the legal material they are using and provide a framework for states to preserve legal material in a way that allows for permanent access.

The UELMA requires that official electronic legal material be:

1. *Authenticated*, by providing a method to determine that it is unaltered;
2. *Preserved*, in either electronic or print form; and
3. *Accessible*, for use by the public on a permanent basis.

If electronic legal material is authenticated, it is presumed to be an accurate copy of the legal material. The UELMA creates the presumption that authenticated electronic legal material is accurate and that this applies in every other state that has enacted the UELMA. If one state enacts the UELMA, and authenticates its electronic legal material, its legal material is presumed to be an accurate copy for use in another state that has enacted the UELMA.

The UELMA requires that if a state preserves legal material electronically, it must provide for back-up and recovery, and ensure the trustworthiness and continuing usability of the material. In recognizing all of the years of experience that states have gained in the preservation of print material, the act places no special requirements on a state that chooses to preserve its legal material in print format.

State policy and preference allow each state to determine which categories of legal information will be included in UELMA's coverage. For each category of legal information, an official publisher is named. The act requires that the official publisher be responsible for executing the terms of the act, regardless of where or by whom the legal material is actually printed or distributed. The UELMA allows only a state agency, officer, or employee to be the official publisher, although state policy may allow a commercial entity to produce an official version of the state's legal material. The UELMA does not interfere with the contractual relationship between a state and a commercial publisher with which the state contracts for the production of its legal material.

Furthermore, the UELMA does not require specific technologies, leaving the choice of technology for authentication and preservation up to the states.

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